Local 560, International Brotherhood of Teamsters *and* County Concrete Corporation. Case 22–CC–001522

September 14, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

The General Counsel seeks default judgment in this case pursuant to the terms of an informal settlement agreement. County Concrete Corporation filed a charge in Case 22–CC–001522 on November 12, 2010, alleging that Local 560, International Brotherhood of Teamsters, violated Section 8(b)(4)(ii)(B) of the National Labor Relations Act. After being advised of the Regional Director's merit determination regarding the charge, the Respondent entered into an informal settlement agreement, which was approved by the Regional Director on March 31, 2011. Among other things, the settlement agreement required the Respondent to post a notice and refrain from threatening to picket Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other employer, where an object thereof was to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other employer, to cease doing business with County Concrete.

The settlement agreement also contained the following provision:

> PERFORMANCE—Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.
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> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue the complaint on the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing full remedy for the violations found as is customary to remedy such violations. The parties further agree that the U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte.

As set forth in the General Counsel's motion, the Region subsequently notified the Respondent of its failure to comply with the terms of the settlement agreement by, in Cases 22–CC–068160[1] and 22–CC–071865, allegedly engaging in additional violations of Section 8(b)(4)(ii)(B) by threatening Sharp Concrete Corporation and Macedos Construction, LLC with picketing where an object thereof was to force both companies to cease doing business with County Concrete. The Region gave the Respondent an opportunity to cure its non-compliance, but the Respondent failed to do so. Accordingly, on April 26, 2012, the Regional Director issued a consolidated complaint for all three cases. Despite having waived its right to contest the validity of the complaint allegations arising from the present case, the Respondent filed an answer to the consolidated complaint in which it denied those allegations.

On February 15, 2013, Administrative Law Judge Lauren Esposito issued a decision wherein she severed and transferred the present case to the Board for further proceedings. She then found that the Respondent violated Section 8(b)(4)(ii)(B) by threatening Sharp and Macedos as alleged. Subsequently, on May 30, 2014, the Board issued a decision affirming Judge Esposito's decision with respect to Sharp, but reversing with respect to Macedos. *Teamsters Local 560 (County Concrete Corp.)*, 360 NLRB 1067 (2014).[2]

[1] The General Counsel listed this case as 22–CC–061680 in his motion.

[2] In its exceptions to Judge Esposito's decision, County Concrete argued that the judge erred by not ordering the Respondent to cease-and-desist from threatening, restraining, or coercing *any* neutral employer where an object thereof is to force the neutral to cease doing business with *any* primary employer. The Board observed that "[t]he Charging

On April 11, 2013, the General Counsel filed a Motion to Strike Portions of Respondent's Answer, for Summary Default Judgment, and for the Issuance of Board Decision and Order.[3] On March 6, 2015, the Board issued a Notice to Show Cause.[4] The Respondent failed to file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

We find that the Respondent has failed to comply with the terms of the settlement agreement. Pursuant to the performance provision of the settlement agreement set forth above, we grant the General Counsel's motion to strike those portions of the Respondent's answer to the consolidated complaint that pertain to Case 22–CC–001522.[5] We conclude that all of the allegations in the consolidated complaint related to Case 22–CC–001522 are true.[6] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, County Concrete Corporation, a corporation with an office and place of business in Kenvil, New Jersey, and various other facilities in the State of New Jersey has been engaged in the supplying of ready-mix concrete and related construction materials to various employers in the State of New Jersey. During the calendar year preceding issuance of the consolidated complaint, County Concrete, in conducting its business operations described above, purchased and received at its various New Jersey facilities goods valued in excess of $50,000 directly from points outside the State of New Jersey. We find that County Concrete is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We also find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Anthony Valdner — President

Joseph DiLeo — Business Agent

At all material times, the Respondent has been engaged in a labor dispute with County Concrete. At no material time has the Respondent been engaged in a labor dispute with Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., or Terminal Construction Co.

About May 24, 2010, and May 27, 2010, the Respondent, in support of its dispute with County Concrete described above, by Joseph DiLeo, threatened Torcon Construction Co. with picketing of its jobsite.

About July 15, 2010, and July 22, 2010, the Respondent, in support of its dispute with County Concrete described above, by Joseph DiLeo, threatened Century 21 Construction Co. with picketing of its jobsite.

About September 2010, the Respondent, in support of its dispute with County Concrete described above, by Anthony Valdner, threatened J Fletcher Creamer and Sons, Inc., with picketing of its jobsite.

About July 2010, the Respondent, in support of its dispute with County Concrete described above, by Joseph DiLeo, threatened Terminal Construction Co. with picketing of its jobsite.

By the conduct described above, the Respondent has threatened, coerced, or restrained Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., and Terminal Construction Co.

An object of the Respondent's conduct described above has been to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., and Terminal Construction Co. to cease handling or otherwise dealing in the products of, and to cease doing business with, County Concrete Corporation.

CONCLUSIONS OF LAW

1. By the conduct described above, the Respondent has violated Section 8(b)(4)(ii)(B) of the Act.

2. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Party's request for enhanced remedies . . . depends, in part, on our decision in the severed case [, i.e., the present case], and we shall rule on the request in the subsequent decision." 360 NLRB at 1067 fn. 1.

[3] On April 17, 2013, the Respondent filed a response to the General Counsel's motion, arguing that the Board should postpone consideration of the motion until it issued its decision in Cases 22–CC–068160 and 22–CC–071865. That motion is denied as moot.

[4] On March 14, 2013, County Concrete filed a motion to intervene for the purpose of supplementing the General Counsel's motion for default judgment. We find it unnecessary to pass on County Concrete's motion because, as the Charging Party, it is entitled to file a brief. See, e.g., *Insulation Maintenance & Contracting, LLC*, 357 NLRB No. 50, slip op. at 1 fn. 3 (2011). Thus, we have considered County Concrete's motion as a brief in support of its position.

[5] See, e.g., *Rogan Bros. Sanitation, Inc.*, 357 NLRB 1655, 1657 fn. 2 (2011).

[6] See, e.g., *U-Bee, Ltd.*, 315 NLRB 667 (1994).

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. As stated, we reserved the question of enhanced remedial relief presented in Cases 22–CC–068160 and 22–CC–071865, observing that the answer to that question depended, in part, on the circumstances of this case. Taken together, the facts of the previous and present cases reveal that the Respondent is in a long-running dispute with only one primary employer—County Concrete—and, further, that this dispute has enmeshed multiple neutral employers. There is no evidence that the Respondent has a proclivity to engage in unlawful secondary activity with respect to primary employers other than County Concrete. Under these circumstances, we find that it is appropriate to order the Respondent to cease and desist from threatening to picket the neutral employers named in this case or any other neutral employer where an object thereof is to force or require the neutral employer to cease doing business with County Concrete. See *Longshoremen ILWU Local 13 (Egg City)*, 295 NLRB 704, 715 (1989); *Laborers' Local No. 652*, 238 NLRB 986, 986 fn. 2 (1978); *Plasterers' Protective and Benevolent Society*, 158 NLRB 1608, 1619 (1966).

ORDER

The National Labor Relations Board orders that the Respondent, Local 560, International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening to picket Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other person, to cease doing business with County Concrete Corporation.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its business offices and meeting halls in New Jersey copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 22 signed copies of the notice in sufficient number for posting by Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., and Terminal Construction Co. at their New Jersey facilities, if they wish, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 14, 2017

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Philip A. Miscimarra, Chairman

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT threaten to picket Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other person, to cease doing business with County Concrete Corporation.

LOCAL 560, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

The Board's decision can be found at www.nlrb.gov/case/22-CC-001522 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.